

## **The Honorable Ronald B. Leighton**

**UNITED STATES DISTRICT COURT**  
**FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA**

FREDERICK T. BREWSTER, ) Case No. 3:11-cv-05597-RBL  
Plaintiff, )  
vs. ) **WELLS FARGO'S OPPOSITION TO**  
WACHOVIA MORTGAGE, et al., ) **PLAINTIFF'S MOTION FOR**  
Defendant. ) **DEFAULT**

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”)<sup>1</sup>, respectfully requests that this Court deny the motion for default brought by Frederick T. Brewster (“Plaintiff”).

Plaintiff filed this action for damages and injunctive relief in this Court on August 4, 2011. Plaintiff filed an Amended Verified Complaint on August 30, 2011.

Contrary to his statement, Plaintiff never properly served process. Plaintiff filed proofs of service on August 30, 2011. Both proofs indicate that service was attempted by mail, which does not satisfy the requirements of Fed. R. Civ. P. 4. Notwithstanding that Wells Fargo was not properly served, undersigned counsel

<sup>1</sup> Wachovia Mortgage, F.S.B. no longer exists. Wachovia Mortgage, F.S.B. merged into and became a division of Wells Fargo in 2009

filed a Notice of Appearance on August 16, 2011, Dkt. No. 4.

Without providing advance notice of his intention to file for an entry of default or otherwise discussing the matter with defense counsel, Plaintiff filed a request for entry of default on October 24, 2011.

Plaintiff's motion for default should be denied, not only because Plaintiff never properly served Wells Fargo, but Plaintiff also failed to comply with the requirements of Local Rule 55(a), which provides:

A motion for entry of default need not be served on the defaulting party. However, in the case of a defaulting party who has entered an appearance, **the moving party must give the defaulting party written notice of the requesting party's intention to move for the entry of default at least fourteen days prior to filing its motion and must provide evidence that such notice has been given in the motion for entry of default.**

(Emphasis added.) Plaintiff did not provide Wells Fargo with any advance notice of his intention to move for an entry of default. Nor did he offer any proof that he gave such notice.

For these reasons, Plaintiff's motion for default should be denied.

DATED this 26th day of October, 2011.

/s/ Nicolas J. Vikstrom  
Robert J. Bocko, WSBA No. 15724  
Nicolas J. Vikstrom, WSBA No. 38420  
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1                   **CERTIFICATE OF SERVICE**

2       I hereby certify that on the date given below, I electronically filed the  
3 foregoing **WELLS FARGO'S OPPOSITION TO PLAINTIFF'S MOTION FOR**  
4 **DEFAULT** with the Clerk of the Court using the CM/ECF system, and served the  
5 plaintiff Frederick T. Brewster via regular U.S. mail, postage prepaid, at the  
6 following last-known address:

7                   Frederick T. Brewster  
8                   3718 South M Street  
9                   Tacoma, WA 98418-3911

10                  DATED this 26th day of October, 2011, at Seattle, Washington.

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12                    
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14                  Shannaly West